IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

1) CRIMINAL WRIT PETITION NO.1912 OF 2006.
2) CRIMINAL WRIT PETITION NO.1913 OF 2006.
3) CRIMINAL WRIT PETITION NO.1914 OF 2006.
4) CRIMINAL WRIT PETITION NO.1915 OF 2006.
5) CRIMINAL WRIT PETITION NO.1916 OF 2006.
6) CRIMINAL WRIT PETITION NO.1917 OF 2006.
7) CRIMINAL WRIT PETITION NO.1918 OF 2006.
8) CRIMINAL WRIT PETITION NO.1919 OF 2006.
9) CRIMINAL WRIT PETITION NO.1920 OF 2006.
AND
10) CRIMINAL WRIT PETITION NO.1921 OF 2006.

M/s.SPL Technochem Ltd. & others. ... Petitioners
(In all the petitions)

Versus.

M/s.Traxpo Enterprises Pvt.Ltd. & anr. ... Respondents
(In all the petitions)

Shri Mangesh M.D.Patel for the Petitioners.

Shri U.V.Nikam, A.P.P. for the Respondent-State.

CORAM : ABHAY S.OKA, J.

DATED : 12th September, 2006.

P.C.:

1. The facts of all these petitions are more or less identical. Therefore, reference is made to the facts of the Writ Petition No.1912 of 2006.

2. The Petitioners are arraigned as accused in complaints filed by the 1st Respondent under section 138 of the Negotiable Instruments Act, 1881. The learned Magistrate issued process on the said complaints. The orders issuing the process were challenged by the Petitioners by filing Revision Applications before the

Sessions Court. The Revision Applications have been dismissed by the learned Additional Sessions Judge.

3. The learned Counsel appearing for the Petitioners pointed out that the cheque allegedly issued by the 1st Petitioner was drawn in favour of "Bank of India A/c. M/s.Traxpo Enterprises Pvt.Ltd.". He submitted that the complaint under section 138 of the said Act can be filed either by a payee or a holder or a holder-in-due course. He submitted that as the amount payable under the cheque was payable to the Bank of India, the 1st Respondent was not the payee. By placing reliance on the decision of the Orissa High Court in the case of Braja Kishore Dikshit v/s. Purna Chandra Panda (AIR 1957 Orissa 153) and a decision of the Allahabad High Court in the case of Parsotam Saran v/s. Bankey Lal (AIR 1935 Allahabad 1041), he submitted that the 1st Respondent was neither a holder of the cheque nor the holder in due course. He submitted that the complaint at the instance of the 1st Respondent was not at all maintainable and at the highest complaint could have been filed by the Bank. He submitted that even going by the case of the 1st Respondent there was no debt or other liability payable by the Petitioners to the 1st Respondent. He referred to the bill discounting facility granted in favour of the 1st Respondent by Bank of India and submitted that there was no legally enforceable debt or other liability. He, therefore,

submitted that the complaints deserve to be quashed.

4. The Revisional Court while rejecting the Revision Application filed by the Petitioners has held that prima-facie case for issuance of process was made out by the 1st Respondent.

5. For considering the submissions made by the learned Counsel for the Petitioners, a reference will have to be made to the decision of the Apex court in the case of Mohaben Ketanbhai Shah and another v/s. State of Gujarat and others [(2004) 7 S.C.C. 15]. The Apex Court held that if substance of the allegations made in the complaint filed under section 138 of the said Act fulfil the requirement of the said section, the complaint has to proceed and is required to be tried. The Apex Court further held that in considering a complaint under section 138 of the said Act, hypertechnical approach should not be adopted so as to quash the same. The Apex Court held that where, read as a whole, factual foundation for the offence has been laid in the complaint, it should not be quashed.

6. In the case of Dalmia Cement (Bharat) Ltd. v/s. Galaxy Traders and Agencies ltd. and others [(2001) 6 S.C.C. 463] the Apex Court held that section 138 of the said Act makes a civil transaction to be an offence by fiction of law. The Apex Court held that efforts to

defeat the objectives of the said provisions of section 138 by resorting to innovative measures and methods must be discouraged.

7. In the present case according to the case of the Petitioner, the cheque was drawn in favour of Bank of India A/c. M/s.Traxpo Enterprises Pvt.Ltd. The cheque in question was dishonoured and requirement of sending statutory notice has been complied with by the 1st Respondent/Complainant. It is stated in the complaint that the 1st Respondent had sold and supplied goods as per the invoice and challan to the Petitioners/ Accused. According to the 1st Respondent, the Petitioners had accepted the bill of exchange for the said supplies and for payment thereof cheques were issued in favour of "Bank of India A/c. M/s.Trexpo Enterprises Pvt.Ltd.". All the cheques were deposited by the Complainant for encashment. All these cheques were dishonoured and were returned to the Complainant with the remarks "A/c. earmarked by Income Tax Authority" and "Funds insufficient".

8. Whether there existed a lawfully enforceable debt or liability or not is a matter to be decided at the time of trial. Only because the name of Bank of India has been mentioned along with the name of the 1st Respondent, at this stage one cannot jump to the conclusion that the 1st Respondent was neither a payee

nor a holder or holder-in-due course in respect of the cheques. The complaint, read as a whole, shows that the factual foundation for the offence under section 138 read with section 141 of the said Act has been laid. What has been argued before the Sessions Court and this Court constitutes the defence of the Petitioners to the complaint. In my view the Sessions Court was right in rejecting the Revision Applications and confirming the orders issuing process.

9. There is no merit in the writ petitions and the same are dismissed.

10. It is clarified that the observations which are made by the Sessions Court as well as by this Court are for the limited purpose of considering the challenge of the Petitioners to the order issuing process. Nothing stated in these orders shall be construed as an expression of opinion on the merits of the pending complaints and all the contentions of the Petitioners are kept open.

11. At this stage the learned Counsel for the Petitioners prays that the proceedings of the complaints may be stayed for a reasonable period. He states that the Sessions Court had granted stay during the pendency of the Revision Applications. Accordingly it is directed that for a period of six weeks from today,

interim order which was operating in favour of the Petitioners during the pendency of the Revision Applications will continue to operate.

Judge.